

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

AL'CLIFFORD L. WINFREY,

Plaintiff,

No. 04-CV-72388-DT

vs.

Hon. Gerald E. Rosen

ROBERT NILL, et al.,

Defendants.

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ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION

At a session of said Court, held in the  
U.S. Courthouse, Detroit, Michigan  
on September 26, 2005

PRESENT: Honorable Gerald E. Rosen  
United States District Judge

This matter having come before the Court on the July 13, 2005 Report and Recommendation of United States Magistrate R. Steven Whalen recommending that the Court grant, in part, and deny, in part, Defendant's Motion for Summary Judgment; and no timely objections to the Magistrate Judge's Report and Recommendation having been filed; and the Court having reviewed the Magistrate Judge's Report and Recommendation, and the Court's file of this action and having concluded that, for the reasons stated in the Report and Recommendation, Defendant's motion for summary judgment should be granted, in part; and the Court being otherwise fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report

and Recommendation of July 13, 2005 be, and hereby is, adopted by this Court.

IT IS FURTHER ORDERED that, for the reasons set forth in the Magistrate Judge's Report and Recommendation, Defendant's Motion for Summary Judgment be, and hereby is, GRANTED, in part, and DENIED, in part, as follows:

Defendant's Motion for Summary Judgment is GRANTED as to Plaintiff's Section 1983 Fourth Amendment claims of excessive force and his state law gross negligence claims arising out of Plaintiff's shooting and handcuffing. Summary Judgment is also granted in favor of Defendant with respect to Plaintiff's claims of violation of 42 U.S.C. § 1985 and the Michigan Constitution, and his common law claim of intentional infliction of emotional distress. Defendant's Motion for Summary Judgment is DENIED with respect to Plaintiff's Section 1983 Fourth Amendment claim and his gross negligence claim arising out of his alleged beating after being shot and handcuffed.

SO ORDERED.

s/Gerald E. Rosen  
Gerald E. Rosen  
United States District Judge

Dated: September 26, 2005

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 26, 2005, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry  
Case Manager